

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SMILEDIRECTCLUB, INC., et al.,

Petitioners,

v.

RENEE COLORADO,

Respondent.

Case No. [23-cv-01189-WHO](#)

**ORDER GRANTING MOTION TO  
DISMISS AND DENYING PETITION  
TO COMPEL ARBITRATION**

Re: Dkt. Nos. 1, 20

Respondent Renee Colorado has moved to dismiss a petition to compel arbitration brought by petitioners SmileDirectClub, Inc. and SmileDirectClub, LLC (collectively, “SDC”). Dkt. No. 20. If this matter sounds familiar, it is: I previously granted a motion to compel arbitration in a related putative class action of which Colorado admits he is an unnamed member: *Navarro v. SmileDirectClub, Inc.*, No. 22-CV-00095-WHO, 2022 WL 1786582, at \*1 (N.D. Cal. June 1, 2022). After I granted SDC’s motion to compel arbitration in *Navarro*, Colorado filed his own arbitration demand, seeking declaratory relief as a putative class member that the *Navarro* claims were not arbitrable and attaching the First Amended Complaint filed in *Navarro*. See Dkt. No. 1, Ex. A. But Colorado refused to sign a consent form required by the American Arbitration Association for his arbitration to proceed, and it is currently closed. Nonetheless, SDC filed a petition to compel arbitration in this Court. See Dkt. No. 1.

It is unclear why this matter is here. Colorado has not filed any complaint of his own and does not have a pending arbitration either. His arbitration demand, as drafted, attempts to piggyback on the *Navarro* claims. But Colorado is not Navarro. If Colorado wants to challenge

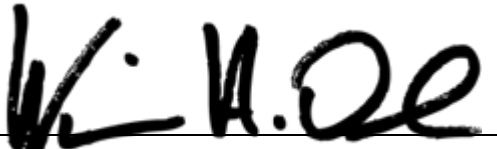
1 the arbitrability of the claims in *Navarro*, he should do so in that arbitration.<sup>1</sup> If he wants to assert  
2 his own claims, he may do so. But at the moment, I have no claims from Colorado to evaluate.

3 I lack subject matter jurisdiction over SDC's petition to compel arbitration. True, I found  
4 that the Class Action Fairness Act provided jurisdiction in *Navarro*. See *Navarro v.*  
5 *SmileDirectClub, Inc.*, 2022 WL 1124594, at \*1 (N.D. Cal. Apr. 15, 2022). But again, Colorado is  
6 not Navarro, and his now closed demand for arbitration does not appear to assert class claims. See  
7 Dkt. No. 1, Ex. A. There are no satisfactory allegations regarding an amount in controversy  
8 unique to Colorado that would establish diversity jurisdiction; SDC simply relies on the amount  
9 demanded in *Navarro* to estimate the amount in controversy here. See *id.*; see also Dkt. No. at 4  
10 n.2. And neither the Federal Arbitration Act nor the Declaratory Judgment Act provide federal  
11 question jurisdiction. See *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25  
12 n.32 (1983); *Countrywide Home Loans, Inc. v. Mortg. Guar. Ins. Corp.*, 642 F.3d 849, 852-53 (9th  
13 Cir. 2011).

14 I understand why SDC is perplexed by Colorado's conduct thus far. I am too. But there is  
15 nothing for me to decide at this point; in any event, I lack the jurisdiction to decide it. For those  
16 reasons, Colorado's motion to dismiss SDC's petition for arbitration is GRANTED and SDC's  
17 petition to compel arbitration is DENIED.

18 **IT IS SO ORDERED.**

19 Dated: August 10, 2023

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21   
22 William H. Orrick  
23 United States District Judge  
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28 <sup>1</sup> Indeed, Colorado and Navarro are represented by the same attorney, who is presumably familiar with the arguments that either party could make.